

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SEP 23 2010

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	Civil No. 10-CV-706
)	
V.)	
)	
JAMES JONES AS OWNER OF)	
PROMISELAND GEORGETOWN,)	
)	
Respondent.)	

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

The United States of America petitions this Court for an order enforcing the summons served upon James Jones as owner of Promiseland Gerogetown, and hereby respectfully represents as follows:

1. Jurisdiction over this matter is conferred upon this Court by 26 U.S.C. §§ 7402 and 7604(a) and by 28 U.S.C. §§ 1340 and 1345.
2. James Jones and Promiseland Georgetown reside or may be found within the boundaries of this district.
3. Morgan W. Johnson is a Revenue Officer of the Internal Revenue Service, employed in the Small Business/Self-Employed Division Gulf States Compliance Area of the Internal Revenue Service at 9430 Research Blvd, M/S 5210AUNW, Austin, TX 78759.
4. Revenue Officer Johnson is tasked with collecting delinquent federal employment tax liabilities assessed against Promiseland Georgetown for the periods ending on 09/30/2008, 12/31/2008, 03/31/2009, 06/30/2009, 03/31/2010.
5. In his capacity as an IRS Revenue Officer, Revenue Officer Johnson is authorized

to issue IRS summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

6. On the 4th day of May, 2010, under the authority of 26 U.S.C. § 7602, an Internal Revenue Service summons was issued to James Jones as owner of Promiseland Georgetown ("Respondent"). The summons was served upon Respondent by personal service, as indicated in the Certificate of Service, as required by 26 U.S.C. § 7603. A true and correct copy of the summons with Certificate of Service is attached hereto marked as Exhibit A and is incorporated herein by reference.

7. The summons required Respondent to appear and give testimony relating to the tax liabilities or for the collection of the tax liabilities of Respondent or the periods designated, and to bring and produce for examination the items set out in Exhibit A, to the IRS Office shown on the summons as the place for appearance.

8. Respondent failed to appear at the time and place designated by the summons and failed to produce the required items set out in Exhibit A.

9. The information contained in the documents not produced in accordance with the summons is either not in the possession of the IRS, or if in the possession of the IRS, is in a non-retrievable file system and/or is not readily accessible without undue administrative burden and expense.

10. All administrative steps required by the Internal Revenue Code for the issuance of the IRS summons have been followed.

11. The items required by the summons in Exhibit A are relevant to the IRS's collection of the delinquent federal employment taxes assessed against Respondent.

12. No Justice Department referral is in effect within the meaning of 26 U.S.C. §

7602(d)(2) with respect to Respondent for these tax periods.

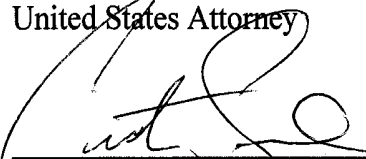
13. In order to obtain enforcement of a summons, the United States must establish that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies all administrative steps required by the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

14. The attached Declaration of Revenue Officer Johnson establishes the government's prima facie showing under *Powell*.

WHEREFORE, Petitioner United States of America respectfully requests that this Court enter an Order requiring the Respondent to appear at a date and hour to be determined by the Court to give testimony and produce the items set out in Exhibit A, or at a date and hour to be designated by the Court to show cause, if Respondent can, why Respondent should not be directed by the Court to appear and produce the items set out in Exhibit A and to testify.

Respectfully submitted,

JOHN E. MURPHY
United States Attorney

A handwritten signature in black ink, appearing to read 'Curtis C. Smith', is written over a horizontal line.

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